IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23145 of 2004

Between:

D. Viswanatha Reddy & Company, Sand Lease Holder,
H.No. 9/92-2,Krishnanagar, Kurnool, Rep. by its Proprietor D. Viswanatha Reddy.

..... PETITIONER

AND

1 The Collector and District Magistrate, Kurnool.
2 The District Panchayat Officer, Kurnool.
3 The Assistant Director of Mines & Geology, Kurnool.
4 The Deputy Director, Ground Water Department, Kurnool.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ, Order or Direction of the like nature: a) Declaring impugned Notification bearing Rc.No. 3389/Pts.A3/2004 dated 7-12-2004 issued by the 1st Respondent imposing the ban on sand quarrying at Sunkesula Reservoir bed ie., Sunkesula (Kurnool Mandal), Kothakota, Erladinne, K. Singavaram , Kondapuram and Mudumala (C. Belagal Mandal) of Kurnool District, and canceling the Sand Lease Agreement dated 15-5-2004 in favour of the Petitiaoner concern which is in force till 21-5-2005 as illegal, arbitrary, void ab initio and without jurisdiction. b) Consequently direct the Respondents to allow the Petitioner to carry out sand quarrying in the Sunkesula Reservoir bed ie. Sunkesula (Kurnool Mandal), Kothakota, Erladinne, K. Singavaram , Kondapuram and Mudumala (C. Belagal Mandal) of Kurnool District till 21-5-2005, ie., till end of the 2nd Year lease period as per the Agreement dated 22-5-2003 and 15-5-2004 and to pass such other order or further orders

Counsel for the Petitioner:MR.E.AJAY REDDY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORDER:

The petitioner was granted lease to quarry sand in the reaches of Sunkesula Reservoir bed i.e. Sunkesula (Kurnool Mandal), Kothakota, Erladinne, K.Singavaram, Kondapuram and Mudumala (C.Belagal Mandal), of Kurnool District, for a period of two years, with effect from 22-05-2003. The 1st respondent cancelled the same through his order dated 07-12-2004. The basis for the said order is the report of the Deputy Director (Ground Water), Kurnool, and Assistant Director of Mines and Geology, Kurnool.

Learned counsel for the petitioner, Sri Ajay Reddy, submits that the lease is valid up to the expiry of two years, from the date of handing over of possession, and that the petitioner has already paid the bid amount of Rs.1,36,80,000/-, for the first year, and a sum of Rs.1,50,48,000/-, for the second year. He submits that the lease is valid till 21-05-2005. He contends that though the A.P. Minor Mineral Concession Rules, as amended through G.O.Ms.No.1, dated 01-01-2001 (hereinafter referred to as 'the Rules'), provide for cancellation of lease before the expiry of the period, it is mandatory that a show cause notice is issued, indicating the reasons therefor. He submits that the impugned order is liable to be set aside on the ground of violation of principles of natural justice.

Learned Government Pleader for Panchayat Raj, on the other hand, submits that under the Rules, the right of the Government to cancel the lease, whenever depletion of water level is noticed; is reserved, and no exception can be taken to the impugned order.

The petitioner emerged as the successful bidder for grant of lease of sand quarry, for the reaches referred to above. He paid the entire bid amount for the first year, and the enhanced amount at 10%, for the second year. The lease is valid till 21-5-2005.

Rule 9 (v) of the Rules reads as under:

> "Whenever the Ground Water effect is noticed, safety of structure is effected due to sand quarrying by the lease holder, the Collector concerned shall denotify the area in

consultation with Ground Water Department and with the concerned District Panchayat Officer and the local bodies as the case may be".

This Rule enables the District Panchayat Officer to de-notify the area whenever it is noticed that the quarry of the sand by a leaseholder is resulting in depletion of ground water levels, or endangering safety of any structures. Though the Rule, does not, in terms, indicate that an existing lease can be cancelled, taking into account its purport, it can be inferred that if the situation warrants, an existing lease can also be cancelled, apart from de-notifying the area.

Once a lease is granted in favour of an individual, he parts with substantial amount. He not only acquires rights to carry on the lifting of sand, but also incurs obligations towards various persons involved in supply of sand. Having regard to the size of the quarry, corresponding establishment is required to be provided.

Preservation of ground water levels is certainly an important factor, and a cause advancing public interest. However, before an existing lease is sought to be cancelled, for the reason that the ground water level in the area is receding, the lessee is entitled to be put on notice. It is not as if the depletion of ground water is noticed overnight, or that it is a development, which takes place at once. This Court is compelled to observe that there is no consistency in the steps taken by the respondents from time to time. When this Court imposed ban on lifting of sand from all sources, except the rivers of Krishna, Godavari and Penna, the respondents and other authorities in the State approached the Court for lifting of the ban, stating that the water level has improved, and no harm as such would be caused, if the sand is quarried. Even assuming that there was change of circumstances ever since then, the cancellation of an existing lease could not have been resorted to, without issuing notice to the petitioner.

On this ground alone, the writ petition is allowed, and the impugned order is set aside. It is, however, left open to the respondents to issue notice to the petitioner and pass appropriate orders, in accordance with the relevant provisions of law. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.14-12-2004

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To

1 The Collector and District Magistrate, Kurnool.
2 The District Panchayat Officer, Kurnool.
3 The Assistant Director of Mines & Geology, Kurnool.
4 The Deputy Director, Ground Water Department, Kurnool.

5. 2 CCs to G.P. for Panchayat Raj & Rural Development, High Court of A.P., High Court Buildigns, Hyderabad.

6. 2 C.D. copies.

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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Dated 14-12-2004